

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**D.J.; TONI CORDOVA, *et al.*,**

**Plaintiffs,**

**v.**

**UNIVERSITY OF IOWA HOSPITALS  
AND CLINICS, *et al.*,**

**Defendants.**

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**Civil Action No. 2:22-cv-00752-CB**

**Judge Cathy Bissoon**

**JOINT MOTION TO BIFURCATE RULE 12(B) BRIEFING**

Plaintiffs and Defendants Duke University Health System, Inc., Columbia University Medical Center, Dr. Maryam Banikazemi, Dr. Manesh Patel, Children’s Memorial Hospital, Dr. Joel Charrow, Baylor College of Medicine, Dr. Christine Eng, Cincinnati Children’s Hospital, Dr. Robert Hopkin, University of Minnesota, Dr. Michael Mauer, University of Washington Medicine, Dr. Ronald Scott, Massachusetts General Hospital, Dr. Katherine Sims, University of Alabama at Birmingham Medicine, Dr. David Warnock, Cedars-Sinai Medical Center, Dr. William Wilcox, and Ann & Robert H. Lurie Children’s Hospital of Chicago (“Moving Defendants”) (collectively with Plaintiffs, “Moving Parties”), by and through undersigned counsel, file this Joint Motion to Bifurcate Rule 12(b) briefing and in support state as follows:

1. Plaintiffs filed this class action on May 21, 2022 alleging that Moving Defendants are responsible for harm Plaintiffs allegedly sustained in connection with a shortage of a drug called Fabrazyme.

2. There were various issues with service of process on the twenty-four defendants listed in the Complaint. Two foreign defendants still have not been served. Various counsel for

Defendants in the United States are trying to work to coordinate threshold Rule 12 issues, but even to this date, counsel for some Defendants have not yet appeared in the case.

3. Counsel for Defendants and counsel for Plaintiffs are actively cooperating to streamline the briefing of Rule 12 issues in as efficient a manner as possible to conserve judicial and party resources.

4. Plaintiffs assert the following seven claims on behalf of a class including “any U.S. citizen that is or was a research subject of the effects of ‘low dose’ Fabrazyme”:

- Count I – Tort of Failure to Obtain Informed Consent
- Count II - Breach of Fiduciary
- Count III – Violation of 42 U.S.C. § 1981 – Equal Protection under the Law
- Count IV - Violation of 42 U.S.C. §1983 – Protection of Rights from Those Acting Under Color of Law
- Count V - Violation of 42 U.S.C. §1985(3) – Conspiracy to Deprive Rights from Citizens
- Count VI – Violation of 42 U.S.C. §1986 – Negligent Deprivation of Rights of Citizens
- Count VII – Virginia Wrongful Death (Code of Virginia § 8.01-50) or in the alternative Survive Action Claims (Code of Virginia § 8.01-25)<sup>1</sup>

5. The Complaint alleges that two Plaintiffs are citizens of Pittsburgh “so as to permit the Western District of Pennsylvania to exercise personal jurisdiction,” as the basis for personal jurisdiction. Compl. ¶ 42.

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<sup>1</sup> This claim is asserted by only Plaintiffs Eddie Viers, individually and as administrator of the Estate of Teresa Viers as substituted for Teresa Viers; Jeanne Wallace, individually and as administrator of the Estate Of Joseph Wallace as substituted for Joseph Wallace; James Wallace; and Samuel Wallace.

6. At various times since the Complaint was filed, counsel for Plaintiffs met and conferred with various counsel for the Moving Defendants about the Moving Defendants' forthcoming motions to dismiss Plaintiffs' Complaint. During these conferences, various counsel for the Moving Defendants discussed the Moving Defendants' belief supported by case law with Plaintiffs' counsel that the Complaint is subject to dismissal under Fed. R. Civ. P. 12(b)(2) because the Court lacks personal jurisdiction over the Moving Defendants.

7. Additionally, counsel for Plaintiffs and counsel for the Moving Defendants who operate as public entities (collectively, the "Public Entity Defendants") discussed the Public Entity Defendants' position that their jurisdictional immunity is also dispositive.

8. Finally, the Moving Parties also discussed the Moving Defendants' belief that the Complaint is alternatively subject to dismissal under Fed. R. Civ. P. 12(b)(6).

9. The Moving Parties agree that personal jurisdiction and the Public Entity Defendants' jurisdictional immunity are threshold dispositive issues. The Moving Parties also agreed judicial efficiency would be best served by the Court considering the Moving Parties' arguments on these two discrete issues before the parties brief the additional arguments available to the Moving Defendants under Fed. R. Civ. P. 12(b)(6).

10. If the Moving Defendants' jurisdictional immunity and/or personal jurisdiction arguments succeed, the Court need not address (and the parties need not brief) whether the Complaint adequately pleads facts supporting the seven causes of actions Plaintiffs allege.

11. The Moving Parties thus respectfully request that the Court exercise its inherent power "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants," *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *Remington Rand Corporation v. Business Systems, Inc.*, 830 F.2d 1274 (3d Cir. 1987), and order that the

Moving Defendants may file initial motions to dismiss the Complaint for lack of personal jurisdiction and/or jurisdictional immunity from Plaintiffs' claims, then, if Plaintiffs' claims survive, later file separate motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

12. Specifically, the Moving Parties respectfully request that the Court enter an order establishing the following briefing schedule:

- The Moving Defendants shall file a single omnibus motion in response to Plaintiffs' Complaint that addresses only the defenses of personal jurisdiction and jurisdictional immunity on or before November 8, 2022. This response shall not exceed 35 pages.
- Plaintiffs may file an Amended Complaint on or before November 15, 2022.
- The Moving Defendants shall file a single omnibus motion in response to the Amended Complaint that addresses only the defenses of personal jurisdiction and jurisdictional immunity on or before December 6, 2022. This response shall not exceed 35 pages.
- Plaintiffs shall file an opposition to the Moving Defendants' omnibus motion on or before January 3, 2023. This opposition shall not exceed 35 pages.
- The Moving Defendants shall file a single reply in support of their omnibus motion on or before January 17, 2022. This response shall not exceed 15 pages.
- In the event this action survives the Moving Defendants' omnibus motion, the Moving Defendants shall file separate responses to the Complaint asserting all defenses available under Fed. R. Civ. P. 12(b)(6) within 45 days of the Court's ruling.

13. Defendants University of Iowa Hospitals and Clinics and Dr. Ademola Aboise have not yet appeared in this action but do not object to the relief sought in this motion.

WHEREFORE, the Moving Parties respectfully request that the Court enter the attached proposed order bifurcating Rule 12(b) briefing for this matter.

*[signatures begin on the following page]*

DATED: October 11, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was filed electronically on this 11<sup>th</sup> day of October, 2022. Service of this filing will be made on all ECF-registered counsel through the court's electronic filing system. Parties may access this filing through the court's system.

/s/ Abigail A. Golden